

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2721 OF 2005

Shri Deepak Namdeo Kale : Petitioner
V/s.

Shri Rajendra Narayan Suryawanshi & Ors.: Respondents

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Mr.A.A.Kumbhakoni with Mr.A.M.Kulkarni for the petitioner.
Mr.M.P.Vashi for respondent no.1.

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CORAM : S.A. BOBDE, J.

June 8, 2005.

P.C.:

1. Leave to delete respondent no.2 is granted.
2. Rule, returnable forthwith. Mr.Vashi, learned counsel, appears and waives service of rule on behalf of respondent no.1.
Heard by consent.
3. The petitioner is a returned candidate. His election is challenged by respondent no.1, inter alia, on the ground stated in the Election Petition which reads as follows:-

"During the cause (sic) of election, from 4.1.2002 to 10/2/2002, the 3rd Respondent as a sitting councillor from the same ward got the following work done from the BMC, at different places in same ward promising that he will provide more facilities & Amenition. The said work as well as promises were only with the dishonest intention to secure the votes, from the voters. In the course of 5 years he could have done the said work as a councillor. He purposely delayed the execution of work till the elections, though the sanction from BMC was taken earlier. The Instances of work taken up in the area was as under."

The details of the work are given thereafter.

4. In support of the aforesaid allegation, respondent no.1 examined one Ravindra Yeshwant Mokashi (P.W.11) who was working as an Assistant Engineer in 'D' ward. He has stated on oath that during the relevant period, he was working in 'G' North Ward as Project Officer, Dharavi, and during the election period, no work was going on in Dharavi area, which is admittedly a part of the

constituency. Respondent no.1, therefore, sought permission to cross-examine this witness under section 154 of the Indian Evidence Act, 1872 since obviously this witness did not support the petitioner's case set out above. The Court has granted permission to cross-examine this witness. Having regard to certain correspondence by the respondent with respect to the work allegedly carried out during the election period, the Court considered it appropriate to permit the respondent to cross-examine this witness whose evidence is undoubtedly crucial to the case. This permission is challenged before this Court. I see no reason to interfere in this matter since section 154 grants discretion to the Court to permit such cross-examination. There appears to be no perversity in the Court having granted permission to cross-examine in this case, particularly since the witness was summoned by respondent no.1 to testify regarding the work allegedly carried out at the instance of the petitioner during the election period. The witness appears to have said something absolutely contrary to the purpose for which he was summoned. If the Court was of view that there is no cause for suspicion regarding the credibility of the witness, which needs to be cleared by permission to cross-examine him by the party who called him, the order cannot be said to suffer from any error of law apparent

from the face of the record. The trial is under way and, undoubtedly, the petitioner would be entitled to raise all such contentions regarding the credibility of this witness even after his cross-examination, in accordance with law.

5. Accordingly, the petition fails and the rule stands discharged.

Sd/-

S.A. BOBDE, J.